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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1940

No. 521

PITTSBURGH PLATE GLASS COMPANY,
Petitioner,

vs.

NATIONAL LABOR RELATIONS BOARD.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

J. W. McAfee,
Attorney for Petitioner.

Leland Hazard,
Joseph T. Owens,
Of Counsel.

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To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the United States:

Your petitioner, Pittsburgh Plate Glass Company, a corporation, prays that a writ of certiorari issue to review the judgment and order of the United States Circuit Court of Appeals for the Eighth Circuit affirming and ordering enforcement of an order of the National Labor Relations Board.

Proceedings and Opinions Below.

The proceeding in question began with a petition, subsequently amended, for investigation and certification of representatives, pursuant to Section 9-c of the National Labor

Relations Act (49 Stat. 453, 29 U. S. C. A., Sec. 159), filed by the Federation of Flat Glass Workers of America, affiliated with the C. I. O. (sometimes referred to herein as "Federation"), asserting that the appropriate bargaining unit consists of production and maintenance employees in the Pittsburgh Plate Glass Company's flat glass division, including plate and safety glass plants located at Creighton and Ford City, Pennsylvania, and Crystal City, Missouri, and window glass plants located at Mt. Vernon, Ohio, Clarksburg, West Virginia, and Henryetta, Oklahoma (R. 354-a, 354-b).

At the hearing thereon, the Crystal City Glass Workers' Union (sometimes referred to herein as "Crystal City Union") filed its motion to intervene in said proceeding, asserting that it represented approximately 1,500 of a total of 1,800 employees in the Company's plant at Crystal City. The Trial Examiner denied said motion on the ground that said Union was a party to said proceedings.

On January 13, 1939, the Board issued its Decision and Certification of Representatives,[1] designating all of the Company's flat glass division as the appropriate unit and certifying the Federation of Flat Glass Workers of America as the exclusive representative of all of the designated employees in said unit.

The Federation, on January 26, 1939, filed a charge that the Company had refused to bargain in accordance with the aforesaid certification, and the Board filed a complaint on February 20, 1939, charging that such refusal by the Company was an unfair labor practice. The Crystal City union was allowed to intervene.

The Board issued its Decision and Order[2] on said complaint on September 19, 1939, affirming its holding that the appropriate unit for collective bargaining is the designated employees in the Company's flat glass division, that the

[1] *In re Pittsburgh Plate Glass Co.*, 10 N. L. R. B. 1111 (R. 43).

[2] *In re Pittsburgh Plate Glass Co.*, 15 N. L. R. B. 515 (R. 430).

Federation is the exclusive representative of the employees in said unit, and that the refusal of the Company to bargain with the Federation in such unit is an unfair labor practice, and ordering the Company, upon request, to bargain with the Federation as a representative of all of the employees in said unit. Honorable William M. Leiserson dissented from said Decision and Order and held that the complaint against the Company should be dismissed.

The Company filed a petition to review the Decision and Certification of January 13, 1939, in the United States Circuit Court of Appeals for the Eighth Circuit (R. 453), and a separate petition to review the Decision and Order of September 19, 1939 (R. 469), which petitions were consolidated with the petition for review which had been filed by the Crystal City Glass Workers' Union. The Company also filed in said consolidated cases, petition for leave to adduce additional evidence (R. 536). On July 23, 1940, the Circuit Court of Appeals entered its opinion (R. 545) and decree (R. 552) denying petitioner's petitions to adduce additional evidence; holding the order of the Board valid; and granting its request for enforcement thereof.[3]

Jurisdiction.

The jurisdiction of this Court is invoked under Section 240-a of the Judicial Code, as amended (28 U. S. C. A., Sec. 347-a). The final decision of the Circuit Court of Appeals was anounced July 23, 1940, and judgment was entered on the same date. Petition for rehearing was denied August 12, 1940 (R. 571). This petition is filed October 23, 1940.

Questions Presented.

I. Whether the certification of the National Labor Relations Board including employees in petitioner's Works No.

[3] *Pittsburgh Plate Glass Co.* v. *N. L. R. B.*, 113 F. (2d) 698 (1940).

9 at Crystal City, Missouri, with five other flat glass plants of petitioner, in the unit designated as appropriate for collective bargaining and certifying the union having a majority in such unit as the exclusive bargaining agent of the designated employees therein, against the wishes of a majority of the affected employees in the Crystal City plant, is valid and enforcible.

(a) Whether refusal by the petitioner to comply with said certification by recognizing as the exclusive bargaining representative of employees in the Crystal City plant the union having a majority in the designated unit but less than a majority of the employees at the Crystal City plant, is an unfair labor practice under the Act.

(b) Whether employees in a plant constituting a unit may be validly included with other plants in a larger unit, against the wishes of a majority of such employees, in the absence of any finding that such smaller unit is inappropriate for purposes of collective bargaining.

(c) Whether the conclusion of the Board as to the appropriate unit, expressly based upon specific findings of fact, some of which are not supported by evidence, can form the basis of a valid and enforcible order.

(d) Whether the Board, in designating the appropriate unit, may ignore and contradict factors and standards recognized by it in other cases.

(1) Whether the Board in assigning reasons which are specious and unsupported by evidence, as justification for ignoring factors and standards recognized by it as applicable in ascertaining appropriate unit, is acting in a capricious and arbitrary manner so as to invalidate the order based thereon.

II. Whether petitioner has been deprived of rights under the Constitution of the United States in the proceedings under consideration.

(a) Whether the National Labor Relations Act, in delegating to the Board legislative authority to ascertain the appropriate unit provides sufficient standards in connection therewith to comply with Section 1, Art. 1, of the Constitution of the United States.

(b) Whether the Act, as construed and applied by the Court of Appeals in this case, has ignored standards contained in the Act, in violation of Section 1, Art. 1, of the Constitution of the United States.

(c) Whether petitioner has been accorded a full and fair hearing in the proceeding under consideration, as guaranteed by the Fifth Amendment to the Constitution of the United States.

Statute Involved.

The statute involved is the National Labor Relations Act, approved July 5, 1935, 49 St. 449, *et seq.*, 29 U. S. C. A., Sec. 151, *et seq.*—particularly Section 9 of said Act, 29 U. S. C. A. Sec. 159[4].

The statute is filed herewith as an appendix.

Statement.

Pittsburgh Plate Glass Company is a corporation, with its principal office located at Pittsburgh, Pennsylvania. It has been continuously, since 1883, engaged in the manufacture, sale and distribution, among other things, of various types of glass. Its operations are divided into five divisions, one of which is the flat glass division. The following

[4] Sec. 9 appears at page 6 of the appendix hereto.

diagram shows the location of the plants in the flat glass division, the type and extent of production, and an approximation of the number of men employed:

Volume of Production—1937

Plant Location	Plate	Safety	Structural Carrara	Window	Employees*	
Works No. 1 Creighton, Pa.	35,072M sq. ft.	17,416M sq. ft.[1]	None	None	1289(plate) 947(safety)	12/ 8/37 2/ 1/38
Works No. 4 Ford City, Pa.	22,203M sq. ft.	None	None	None	1408	9/30/37
Works No. 6 Ford City, Pa.	None	None	150M sq. ft.	None	268	9/30/37
Works No. 9 Crystal City, Mo.	34,511M sq. ft.	13,240M sq. ft.[2]	None	None	1607	9/30/37
Works No. 10 Henryetta, Okla.	None	None	None	494M boxes	273	12/ 8/37
Works No. 11 Mt. Vernon, Ohio	None	None	None	893M boxes	350	12/ 8/37
Works No. 12 Clarksburg, W. Va.	None	None	None	975M boxes	353	2/ 1/38

* Dates were selected to reflect approximately normal operations.
[1] Duolite and Duplate.
[2] Herculite and Duplate.

Plate glass is made in only three plants: Works No. 1, at Creighton, Pennsylvania, Works No. 4, at Ford City, Pennsylvania, and Works No. 9, at Crystal City, Missouri. In Works Nos. 1 and 9, the tank method is used. The Company has two tanks at Crystal City. One of them is designed according to a patented plan obtained from the Pilkington Company in England. It is the only Pilkington tank which the Company has (R. 90, 98). The pot method of production, used at Ford City, is quite different (R. 122).

The Company produces two types of laminated safety glass: Duplate, made at Works Nos. 1 and 9, and Duolite, made only at Works No. 1 (R. 112, 113). Herculite, a glass specially tempered for safety, is made only at Crystal City (R. 113).

Three plants in the division produce window glass exclusively. They are Works No. 10, Henryetta, Oklahoma, Works No. 11, at Mt. Vernon, Ohio, and Works No. 12, at Clarksburg, West Virginia. The method used in producing window glass is quite different from that used in the production of plate glass (R. 98).

The Crystal City plant started in 1870 and was acquired by the Company in 1895 (R. 88). It is one of the largest in the system. The tank method is used exclusively therein and only polished plate glass is made. No material is fabricated at Crystal City for shipment to other plants for further work and in normal operations there is no exchange of unfinished or partly unfinished materials between this and other plants (R. 88-89). There is no exchange of employees between Crystal City and other plants (R. 89, 244).

The only sand mine which the Company has is operated in connection with the Crystal City plant (R. 88).

The general management of the Company's business is conducted from its office in Pittsburgh, Pennsylvania (R. 74).

The Company's superintendent at Crystal City is in full charge of operations there. All matters of working conditions (R. 89), employment and grievances (R. 92) are handled locally by him. He decides who is to be laid off and rehired. Any changes in wage rates are determined by the local superintendent and approved at the home office (R. 112, 235). It is the only plant which has its own purchasing agent (R. 111).

The plant at Crystal City is independent of the other plants to such an extent that it could be operated independently for the manufacture of plate glass, Duplate and Herculite even if it were the only plant the Company had in production (R. 95).

The plant nearest to Crystal City which produces any of the same type of glass there produced is Ford City, Pennsylvania—675 miles away (R. 90).

There is some variation in wage rates for particular occupations in the various plants. However, the variation is rarely more than one cent per hour in the averages (R. 236).

In 1933 the Federation met with the Company and was given some recognition as representative of workers in the window glass plants. In 1934 the Federation obtained a majority in the Creighton and Ford City plants and, without any formal agreement, was recognized there (R. 164).

On November 13, 1934, the Company entered into a written contract with the Federation which was largely devoted to providing a method for handling grievances through local unions (Ex. P. 1, R. 275; Introduced, R. 101).

In January, 1935, a dispute arose over the Federation's demand for closed shop, check-off and 20% increase in pay. The real dispute was over the check-off and closed shop principle; the Company would not have broken with the union on the point of wages (R. 80). The strike was terminated by a new agreement, executed February 5, effective February 1, 1935 (Ex. P. 2, R. 282; Introduced, R. 101). It granted a 5% general wage increase and also provided for the handling of grievances through local unions. All the employees in the division were given the benefit of the increase in wages (R. 236).

On November 26, 1935, a contract was made between the Company and the Federation, providing that wages should be according to attached schedule; rate schedules were included for all of the flat glass plants except Works No. 9, at Crystal City (Ex. P. 3, R. 290; Introduced, R. 101).[5]

The last of the series of contracts was executed January 20, 1937 (Ex. P. 4, R. 321; Introduced, R. 101). The plants covered thereby are enumerated and the Crystal City plant is not included.

The attitude of the Company with respect to these contracts was that any time a majority of the employees at any

[5] The provisions of the contracts (Exs. P. 1, 2, 3) by their terms can be operative only in plants where the Federation has a local union. The local union at Crystal City was not established until long after these contracts had expired.

plant desired to be represented by the Federation, they would be included (R. 81).

In the negotiations which resulted in the above agreements, there was no representative of employees at Crystal City in attendance (R. 80, 103), and none of the contracts was executed by anyone from that plant (R. 108).

The first discussion between the Federation and the Company on the subject of representation of the employees at Crystal City was in October, 1936 (R. 177). It was stated for the Company that until there was some showing of membership in that plant, the Company would not recognize the Federation for its employees (R. 169).

The first that the Vice-President in charge of the flat glass division heard of the Federation having a local at Crystal City was in April, 1938, when Mr. Fuller, President of the Federation, suggested that negotiations by the Company with the Crystal City union be discontinued, upon his assurance that he would not come around for an agreement covering Crystal City until his union had a majority there (R. 107).

At the time of the execution of the first three agreements (Ex. P. 1, 2 and 3) the Federation had probably a dozen members at Crystal City. At the time the subject was first mentioned in 1936 there were possibly seventy-five members there (R. 174).

A local of the Federation was formed at Crystal City in February, 1938, and in April of that year a charter was issued to it. A witness for the Federation testified that on September 30, 1938, there were 463 members of the local, but the witness failed to produce membership cards or records to support the testimony (R. 199-200). He said that a majority of said members were employed by the Company but that probably 75 or 80 of them were unemployed.

The Crystal City union was incorporated by a *pro forma* decree by the Circuit Court of Jefferson County, Missouri,

on March 3, 1938. It is a labor organization, admitting to membership employees at the Company's Crystal City plant, and claims a membership of something over 1300 of such employees.

The Company had recognized the Crystal City union as the representative of a majority of its employees in Works No. 9 in the spring of 1938, but when the Board filed a complaint negotiations were broken off pending the proceedings. By stipulation entered into between the Board and the Company on July 21, 1938, the Company agreed to and did withdraw such recognition.[6]

Crystal City, Missouri, is about thirty miles from St. Louis, is located in an agricultural area, and has no production industry except the glass plant. Employees in the plant are largely native-born Americans—sons and grandsons of men who worked in the plant before them (R. 94). In contrast to the communities in which the other divisions are located, there is no background of outside union activities in the Crystal City community (R. 240). There has been no strike there within the memory of an employee who has worked in the plant since 1919 (R. 221).

It is admitted that the Federation does not have a majority at Crystal City (R. 209), and a petition bearing the signatures of 1270 employees, requesting that Works No. 9 be recognized as a separate unit, was admitted in evidence (R. 253-254).

On January 13, 1939, the Board issued its Decision and Certification of Representatives, designating all of the plants in the Company's flat glass division as an appropriate unit and certifying the Federation as the exclusive representative of all of the designated employees in said unit (R. 43). Thereafter, the Company met with the Fed-

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[6] *In re Pittsburgh Plate Glass Co.*, C. 778, 8 N. L. R. B. 1210, 102 F. (2d) 1004.

eration at Cleveland on January 18, 1939, and the Federation demanded that the Crystal City plant be included. Letters were then exchanged between the Company and the Federation, the substance of which is that the Federation insisted upon the inclusion of Crystal City but ultimately agreed that the then existing contract (which does not cover Crystal City) should remain in force pending a final determination of the question of appropriate unit (Board's Exs. 5-A, 5-B, 5-C, 5-D, 5-E, 5-F, R. 271-275; Introduced, R. 18).

It is the failure of the Company to recognize the Federation as the exclusive representative within the unit designated which the Board and the Court of Appeals held was an unfair labor practice.

At the hearing on the complaint, petitioner offered to prove that 1500 out of 1800 employees at Crystal City belong to the Crystal City Union; that the membership has never been dominated or interfered with by the Company; and that membership had increased after the stipulation of July 22, 1938, and the order of September 22, 1938, based thereon, and since the Decision and Certification of January 13, 1939. The evidence was excluded (R. 26-31). The Company's petition to the court for leave to adduce said evidence (R. 536) was denied (R. 552, 553).

Specifications of Errors to be Urged.

The Circuit Court of Appeals erred:

(1) In holding: "The Board, under the facts and circumstances disclosed by the evidence, properly might have determined that the employees at the Crystal City plant were a homogeneous group whose wishes as to representation for the purposes of collective bargaining should be respected and who constituted an appropriate unit for collective bargaining; but we think that it was not compelled to do so" (R. 548).

(a) In failing to hold that the Crystal City plant is "a unit" within the meaning of Sec. 9-a of the Act and that, absent a finding based upon evidence that such unit is not appropriate, the employees therein may not be deprived, under the Act, of the right to have representatives of their own choosing.

(2) In holding that the question of appropriate unit here is debatable and that determination thereof by the Board is not subject to judicial review and in failing to consider that the action of the Board is arbitrary in that:

(a) The conclusion of the Board as to the appropriate unit is based upon specific findings of fact as to the history of collective bargaining and Company domination of employees, neither of which is supported by evidence.

(b) The reasons assigned by the Board for ignoring the wishes of the employees in the Crystal City plant are specious and are not supported by evidence.

(c) The Board capriciously ignored and contradicted factors and standards recognized by it in other cases to be applicable to the question at issue.

(d) It appears from the record that the Board refused to consider fairly and objectively undisputed evidence and did not afford petitioner a full and fair hearing under the Fifth Amendment to the Constitution of the United States.

(3) In holding, upon findings of fact different from those considered by the Board, that the designated unit should be enforced without according the Board an opportunity to pass upon such facts and in failing to hold that since the Board's conclusion as to appropriate unit is expressly based upon findings not supported by evidence, the cause must be remanded to the Board so that it may express a conclusion upon the factors legally available.

(4) In holding that no error was committed in excluding evidence offered by petitioner to show that the membership of the Crystal City Union, constituting a majority of the employees, was not dominated or interfered with by the Company and in denying the petition to adduce such evidence in the Court of Appeals.

(a) In failing to hold that the action of the Board in excluding the evidence offered and then making findings directly contrary thereto was arbitrary and denied petitioner a full and fair hearing, as guaranteed by the Fifth Amendment to the Constitution of the United States.

(5) In holding that the facts specified by the court were sufficient to justify designation of the unit selected.

(6) In holding that where the question of appropriate unit is debatable, the Board has the power to select such unit as it concludes is desirable without limiting the power of the Board to act only upon standards established by the Act under the provisions of Sec. 1, Art. 1, of the Constitution of the United States.

Reasons for Granting the Writ.

1. The decision of the court below involves important questions of national interest which have not been, but should be, settled by this Court. There are points respecting the interpretation and application of the provisions of the National Labor Relations Act for the ascertainment of appropriate unit which are of first impression.

2. The decision is in conflict with provisions of the Act.

(A) Section 9(a)[7] of the Act provides that:

> "Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in *a unit* appropriate for such purposes,

[7] 49 Stat. 453, 29 U. S. C. A., Sec. 159.

shall be the exclusive representatives of all the employees in such unit * * *." (Emphasis added.)

(B) There is no finding and no evidence upon which to base a finding that the Crystal City plant does not constitute "a unit" appropriate for purposes of collective bargaining.

(C) The power given the Board by Section 9(b)[7] to decide what is the appropriate unit is expressly limited by Section 9(a)[7] so that the Board has no power to gerrymander the employees of a smaller into a larger unit so as to deny them the right to have representatives of their own selection unless there be a valid finding that the smaller unit is inappropriate.

(D) The entire act is based upon the policy of promoting industrial peace by protecting the right of workers to full freedom of self-organization and designation of representatives of their own choosing.[8]

3. The decision ignores the fact that although the conclusion reached by the Board may be legally supportable, nevertheless, said conclusion is expressly based upon findings not supported by evidence. The manner in which the conclusion was reached is so arbitrary as to render the Board's order unenforceable.

A. One of the findings which the Board emphasized in reaching its conclusion was that the Federation had endeavored to organize on a division-wide basis and that contracts had been signed upon such basis. The contract of January 20, 1937 (Ex. p. 4) expressly excludes the Crystal City plant. The three preceding contracts (Exs. P. 1, P. 2, P. 3) by their terms are applicable only in plants where the Federation has a local union. In the last of these (Ex P. 3)

[8] 49 Stat. 449, 29 U. S. C. A., Sec. 151.

there is a schedule of wage rates by plants. None is included for Crystal City. No local was formed at Crystal City until April, 1938. There is no evidence whatsoever to support the above finding and it is in fact contradicted by undisputed testimony.

B. Another finding by the Board is that the employees of Crystal City had been dominated and interfered with by the Company. There is no evidence to support it. The only thing urged in that connection is a stipulation between the Company and the Board by which the Company agreed to withdraw recognition from the Crystal City union.[9] The court mistakenly stated that the Board determined that the Company should withdraw such recognition on the ground that the union was Company dominated and supported (R. 547). There is nothing in the stipulation nor is there any evidence to support the statement. It is not a fact.

C. Failure of the court to consider the above is in conflict with principles announced by this Court.

Morgan v. *U. S.*, 298 U. S. 468, 56 S. Ct. 906, 80 L. Ed. 1288 (1936).

4. Although the decision recognizes the settled principle that the court may not substitute its judgment for that of the Board in matters properly coming within the latter's jurisdiction, the decree of the court violates the doctrine in that:

A. The Board reached its conclusion upon the agregate of specific findings of fact. Some of those findings are not supported by evidence and could not as a matter of law be considered by the Board. The court holds that there is some evidence to support the Board's action and tacitly

[9] In *Pittsburgh Plate Glass Co.*, 102 F. (2d) 1004.

assumes that the Board would reach the same conclusion even though it were restricted to the fact validly before it.

B. The court specifies facts which it holds support the Board's conclusion, but those facts are different from the ones which the Board considered and only the Board can say what its conclusion would be if the facts which the court says are available were considered.

5. The court denied petitioner's request for leave to adduce additional evidence to show the wishes of the employees at Crystal City and to show that they had not been dominated or interfered with by the Company, on the ground that it was already clear that a vast majority of the employees at said plant desired a separate unit. The court failed to consider that exclusion of such evidence by the Board followed by a finding that such employees had been dominated is arbitrary.

6. There is no authoritative opinion of this Court as to whether the Act contains sufficient standards to save the provisions of Section 9(b) thereof from being an unlawful delegation of legislative authority under Section 1, Article 1 of the Constitution of the United States.

Panama Refining Co. v. *Ryan*, 293 U. S. 388, 55 S. Ct. 241, 79 L. Ed. 446 (1935).

A. The decision holds that if the question of appropriate unit is debatable then the action of the Board thereon is not subject to judicial review. This is a denial of the existence in the Act of any standards. It would leave the Board free to reach contrary results upon two identical sets of fact. The valid application of the identical standards to identical facts must, of course, give a consistent result.

7. The decision fails to take into account that the decision and certification and the decision and order of the Board

show that the Board refused for specious reasons to apply standards and factors which it had recognized in other cases; that it considered facts not before it and that it made no effort to apply objectively standards of the Act to the facts in evidence—all of which demonstrates that petitioner has been denied due process of law in violation of the Fifth Amendment to the Constitution of the United States.

Conclusion

It is respectfully submitted that, for the reasons stated, this petition for certiorari should be granted.

J. W. McAfee,
Attorney for Petitioner.

Leland Hazard,
Joseph T. Owens,
Of Counsel for Petitioner.

(371)

NATIONAL LABOR RELATIONS ACT

(49 Stat. 449)

AN ACT

To diminish the causes of labor disputes burdening or obstructing interstate and foreign commerce, to create a National Labor Relations Board, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

FINDINGS AND POLICY

SECTION 1. The denial by employers of the right of employees to organize and the refusal by employers to accept the procedure of collective bargaining lead to strikes and other forms of industrial strife or unrest, which have the intent or the necessary effect of burdening or obstructing commerce by (a) impairing the efficiency, safety, or operation of the instrumentalities of commerce; (b) occurring in the current of commerce; (c) materially affecting, restraining, or controlling the flow of raw materials or manufactured or processed goods from or into the channels of commerce, or the prices of such materials or goods in commerce; or (d) causing diminution of employment and wages in such volume as substantially to impair or disrupt the market for goods flowing from or into the channels of commerce.

The inequality of bargaining power between employees who do not possess full freedom of association or actual liberty of contract, and employers who are organized in the corporate or other forms of ownership association substantially burdens and affects the flow of commerce, and tends to aggravate recurrent business depressions, by depressing wage rates and the purchasing power of wage earners in industry and by preventing the stabilization of competitive wage rates and working conditions within and between industries.

Experience has proved that protection by law of the right of employees to organize and bargain collectively safeguards commerce from injury, impairment, or interruption, and promotes the flow of commerce by removing certain recognized sources of industrial strife and unrest, by encouraging practices fundamental to the friendly adjustment of industrial disputes arising out of differences

as to wages, hours, or other working conditions, and by restoring equality of bargaining power between employers and employees.

It is hereby declared to be the policy of the United States to eliminate the causes of certain substantial obstructions to the free flow of commerce and to mitigate and eliminate these obstructions when they have occurred by encouraging the practice and procedure of collective bargaining and by protecting the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection.

DEFINITIONS.

SEC. 2. When used in this Act—

(1) The term "person" includes one or more individuals, partnerships, associations, corporations, legal representatives, trustees, trustees in bankruptcy, or receivers.

(2) The term "employer" includes any person acting in the interest of an employer, directly or indirectly, but shall not include the United States, or any State or political subdivision thereof, or any person subject to the Railway Labor Act, as amended from time to time, or any labor organization (other than when acting as an employer), or anyone acting in the capacity of officer or agent of such labor organization.

(3) The term "employee" shall include any employee, and shall not be limited to the employees of a particular employer, unless the Act explicitly states otherwise, and shall include any individual whose work has ceased as a consequence of, or in connection with, any current labor dispute or because of any unfair labor practice, and who has not obtained any other regular and substantially equivalent employment, but shall not include any individual employed as an agricultural laborer, or in the domestic service of any family or person at his home, or any individual employed by his parent or spouse.

(4) The term "representatives" includes any individual or labor organization.

(5) The term "labor organization" means any organization of any kind, or any agency or employee representation committee or plan, in which employees participate and which exists for the purpose, in whole or in part, of dealing with employers concerning grievances, labor disputes, wages, rates of pay, hours of employment, or conditions of work.

(6) The term "commerce" means trade, traffic, commerce, transportation, or communication among the several States, or between the District of Columbia or any Territory of the United States and

any State or other Territory, or between any foreign country and any State, Territory, or the District of Columbia, or within the District of Columbia or any Territory, or between points in the same State but through any other State or any Territory or the District of Columbia or any foreign country.

(7) The term "affecting commerce" means in commerce, or burdening or obstructing commerce or the free flow of commerce, or having led or tending to lead to a labor dispute burdening or obstructing commerce or the free flow of commerce.

(8) The term "unfair labor practice" means any unfair labor practice listed in section 8.

(9) The term "labor dispute" includes any controversy concerning terms, tenure or conditions of employment, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to arrange terms or conditions of employment, regardless of whether the disputants stand in the proximate relation of employer and employee.

(10) The term "National Labor Relations Board" means the National Labor Relations Board created by section 3 of this Act.

(11) The term "old Board" means the National Labor Relations Board established by Executive Order Numbered 6763 of the President on June 29, 1934, pursuant to Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), and reestablished and continued by Executive Order Numbered 7074 of the President of June 15, 1935, pursuant to Title I of the National Industrial Recovery Act (48 Stat. 195) as amended and continued by Senate Joint Resolution 133[1] approved June 14, 1935.

NATIONAL LABOR RELATIONS BOARD

SEC. 3. (a) There is hereby created a board, to be known as the "National Labor Relations Board" (hereinafter referred to as the "Board"), which shall be composed of three members, who shall be appointed by the President, by and with the advice and consent of the Senate. One of the original members shall be appointed for a term of one year, one for a term of three years, and one for a term of five years, but their successors shall be appointed for terms of five years each, except that any individual chosen to fill a vacancy shall be appointed only for the unexpired term of the member whom he shall succeed. The President shall designate one member to serve as the chairman of the Board. Any member of the Board may be removed by the President, upon notice and hearing, for neglect of duty or malfeasance in office, but for no other cause.

[1] So in original.

(b) A vacancy in the Board shall not impair the right of the remaining members to exercise all the powers of the Board, and two members of the Board shall, at all times, constitute a quorum. The Board shall have an official seal which shall be judicially noticed.

(c) The Board shall at the close of each fiscal year make a report in writing to Congress and to the President stating in detail the cases it has heard, the decisions it has rendered, the names, salaries, and duties of all employees and officers in the employ or under the supervision of the Board, and an account of all moneys it has disbursed.

SEC. 4. (a) Each member of the Board shall receive a salary of $10,000 a year, shall be eligible for reappointment, and shall not engage in any other business, vocation, or employment. The Board shall appoint, without regard for the provisions of the civil-service laws but subject to the Classification Act of 1923, as amended, an executive secretary, and such attorneys, examiners, and regional directors, and shall appoint such other employees with regard to existing laws applicable to the employment and compensation of officers and employees of the United States, as it may from time to time find necessary for the proper performance of its duties and as may be from time to time appropriated for by Congress. The Board may establish or utilize such regional, local, or other agencies, and utilize such voluntary and uncompensated services, as may from time to time be needed. Attorneys appointed under this section may, at the direction of the Board, appear for and represent the Board in any case in court. Nothing in this Act shall be construed to authorize the Board to appoint individual for the purpose of conciliation or mediation (or for statistical work), where such service may be obtained from the Department of Labor.

(b) Upon the appointment of the three original members of the Board and the designation of its chairman, the old Board shall cease to exist. All employees of the old Board shall be transferred to and become employees of the Board with salaries under the Classification Act of 1923, as amended, without acquiring by such transfer a permanent or civil service status. All records, papers, and property of the old Board shall become records, papers, and property of the Board, and all unexpended funds and appropriations for the use and maintenance of the old Board shall become funds and appropriations available to be expended by the Board in the exercise of the powers, authority, and duties conferred on it by this Act.

(c) All of the expenses of the Board, including all necessary traveling and subsistence expenses outside the District of Columbia incurred by the members or employees of the Board under its orders, shall be allowed and paid on the presentation of itemized vouchers

therefore approved by the Board or by any individual it designates for that purpose.

SEC. 5. The principal office of the Board shall be in the District of Columbia, but it may meet and exercise any or all of its powers at any other place. The Board may, by one or more of its members or by such agents or agencies as it may designate, prosecute any inquiry necessary to its functions in any part of the United States. A member who participates in such an inquiry shall not be disqualified from subsequently participating in a decision of the Board in the same case.

SEC. 6. (a) The Board shall have authority from time to time to make, amend, and rescind such rules and regulations as may be necessary to carry out the provisions of this Act. Such rules and regulations shall be effective upon publication in the manner which the Board shall prescribe.

RIGHTS OF EMPLOYEES

SEC. 7. Employees shall have the right to self-organization, to form, join, or assist labor organizations, to bargain collectively through representatives of their own choosing, and to engage in concerted activities, for the purpose of collective bargaining or other mutual aid or protection.

SEC. 8. It shall be an unfair labor practice for an employer—

(1) To interfere with, restrain, or coerce employees in the exercise of the rights guaranteed in section 7.

(2) To dominate or interfere with the formation or administration of any labor organization or contribute financial or other support to it: *Provided*, That subject to rules and regulations made and published by the Board pursuant to section 6 (a), an employer shall not be prohibited from permitting employees to confer with him during working hours without loss of time or pay.

(3) By discrimination in regard to hire or tenure of employment or any term or condition of employment to encourage or discourage membership in any labor organization: *Provided*, That nothing in this Act, or in the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, secs. 701–712), as amended from time to time, or in any code or agreement approved or prescribed thereunder, or in any other statute of the United States, shall preclude an employer from making an agreement with a labor organization (not established, maintained, or assisted by any action defined in this Act as an unfair labor practice) to require as a condition of employment membership therein, if such labor organization is the representative of the employees as provided in section 9 (a), in the appropriate collective bargaining unit covered by such agreement when made.

(4) To discharge or otherwise discriminate against an employee because he has filed charges or given testimony under this Act.

(5) To refuse to bargain collectively with the representatives of his employees, subject to the provisions of section 9 (a).

REPRESENTATIVES AND ELECTIONS

SEC. 9. (a) Representatives designated or selected for the purposes of collective bargaining by the majority of the employees in a unit appropriate for such purposes, shall be the exclusive representatives of all the employees in such unit for the purposes of collective bargaining in respect to rates of pay, wages, hours of employment, or other conditions of employment: *Provided*, That any individual employee or a group of employees shall have the right at any time to present grievances to their employer.

(b) The Board shall decide in each case whether, in order to insure to employees the full benefit of their right to self-organization and to collective bargaining, and otherwise to effectuate the policies of this Act, the unit appropriate for the purposes of collective bargaining shall be the employer unit, craft unit, plant unit, or subdivision thereof.

(c) Whenever a question affecting commerce arises concerning the representation of employees, the Board may investigate such controversy and certify to the parties, in writing, the name or names of the representatives that have been designated or selected. In any such investigation, the Board shall provide for an appropriate hearing upon due notice, either in conjunction with a proceeding under section 10 or otherwise, and may take a secret ballot of employees, or utilize any other suitable method to ascertain such representatives.

(d) Whenever an order of the Board made pursuant to section 10 (c) is based in whole or in part upon facts certified following an investigation pursuant to subsection (c) of this section, and there is a petition for the enforcement or review of such order, such certification and the record of such investigation shall be included in the transcript of the entire record required to be filed under subsections 10 (e) or 10 (f), and thereupon the decree of the court enforcing, modifying, or setting aside in whole or in part the order of the Board shall be made and entered upon the pleadings, testimony, and proceedings set forth in such transcript.

PREVENTION OF UNFAIR LABOR PRACTICES

SEC. 10. (a) The Board is empowered, as hereinafter provided, to prevent any person from engaging in any unfair labor practice

(listed in section 8) affecting commerce. This power shall be exclusive, and shall not be affected by any other means of adjustment or prevention that has been or may be established by agreement, code, law, or otherwise.

(b) Whenever it is charged that any person has engaged in or is engaging in any such unfair labor practice, the Board, or any agent or agency designated by the Board for such purposes, shall have power to issue and cause to be served upon such person a complaint stating the charges in that respect, and containing a notice of hearing before the Board or a member thereof, or before a designated agent or agency, at a place therein fixed, not less than five days after the serving of said complaint. Any such complaint may be amended by the member, agent, or agency conducting the hearing or the Board in its discretion at any time prior to the issuance of an order based thereon. The person so complained of shall have the right to file an answer to the original or amended complaint and to appear in person or otherwise and give testimony at the place and time fixed in the complaint. In the discretion of the member, agent or agency conducting the hearing or the Board, any other person may be allowed to intervene in the said proceeding and to present testimony. In any such proceeding the rules of evidence prevailing in courts of law or equity shall not be controlling.

(c) The testimony taken by such member, agent or agency or the Board shall be reduced to writing and filed with the Board. Thereafter, in its discretion, the Board upon notice may take further testimony or hear argument. If upon all the testimony taken the Board shall be of the opinion that any person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue and cause to be served on such person an order requiring such person to cease and desist from such unfair labor practice, and to take such affirmative action, including reinstatement of employees with or without back pay, as will effectuate the policies of this Act. Such order may further require such person to make reports from time to time showing the extent to which it has complied with the order. If upon all the testimony taken the Board shall be of the opinion that no person named in the complaint has engaged in or is engaging in any such unfair labor practice, then the Board shall state its findings of fact and shall issue an order dismissing the said complaint.

(d) Until a transcript of the record in a case shall have been filed in a court, as hereinafter provided, the Board may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it.

(e) The Board shall have power to petition any circuit court of appeals of the United States (including the Court of Appeals of the District of Columbia), or if all the circuit courts of appeals to which application may be made are in vacation, any district court of the United States (including the Supreme Court of the District of Columbia), within any circuit or district, respectively, wherein the unfair labor practice in question occurred or wherein such person resides or transacts business, for the enforcement of such order and for appropriate temporary relief or restraining order, and shall certify and file in the court a transcript of the entire record in the proceeding, including the pleadings and testimony upon which such order was entered and the findings and order of the Board. Upon such filing, the court shall cause notice thereof to be served upon such person, and thereupon shall have jurisdiction of the proceeding and of the question determined therein, and shall have power to grant such temporary relief or restraining order as it deems just and proper, and to make and enter upon the pleadings, testimony, and proceedings set forth in such transcript a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board. No objection that has not been urged before the Board, its member, agent or agency, shall be considered by the court, unless the failure or neglect to urge such objection shall be excused because of extraordinary circumstances. The findings of the Board as to the facts, if supported by evidence, shall be conclusive. If either party shall apply to the court for leave to adduce additional evidence and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for the failure to adduce such evidence in the hearing before the Board, its member, agent, or agency, the court may order such additional evidence to be taken before the Board, its member, agent, or agency, and to be made a part of the transcript. The Board may modify its findings as to the facts, or make new findings, by reason of additional evidence so taken and filed, and it shall file such modified or new findings, which, if supported by evidence, shall be conclusive, and shall file its recommendations, if any, for the modification or setting aside of its original order. The jurisdiction of the court shall be exclusive and its judgment and decree shall be final, except that the same shall be subject to review by the appropriate circuit court of appeals if application was made to the district court as hereinabove provided, and by the Supreme Court of the United States upon writ of certiorari or certification as provided in sections 239 and 240 of the Judicial Code, as amended (U. S. C., title 28, secs. 346 and 347).

(f) Any person aggrieved by a final order of the Board granting or denying in whole or in part the relief sought may obtain a review

of such order in any circuit court of appeals of the United States in the circuit wherein the unfair labor practice in question was alleged to have been engaged in or wherein such person resides or transacts business, or in the Court of Appeals of the District of Columbia, by filing in such court a written petition praying that the order of the Board be modified or set aside. A copy of such petition shall be forthwith served upon the Board, and thereupon the aggrieved party shall file in the court a transcript of the entire record in the proceeding, certified by the Board, including the pleading and testimony upon which the order complained of was entered and the findings and order of the Board. Upon such filing, the court shall proceed in the same manner as in the case of an application by the Board under subsection (e), and shall have the same exclusive jurisdiction to grant to the Board such temporary relief or restraining order as it deems just and proper, and in like manner to make and enter a decree enforcing, modifying, and enforcing as so modified, or setting aside in whole or in part the order of the Board; and the findings of the Board as to the facts, if supported by evidence, shall in like manner be conclusive.

(g) The commencement of proceedings under subsection (e) or (f) of this section shall not, unless specifically ordered by the court, operate as a stay of the Board's order.

(h) When granting appropriate temporary relief or a restraining order, or making and entering a decree enforcing, modifying, and enforcing as so modified or setting aside in whole or in part an order of the Board, as provided in this section, the jurisdiction of courts sitting in equity shall not be limited by the Act entitled "An Act to amend the Judicial Code and to define and limit the jurisdiction of courts sitting in equity, and for other purposes", approved March 23, 1932 (U. S. C., Supp. VII, title 29, secs. 101–115).

(i) Petitions filed under this Act shall be heard expeditiously, and if possible within ten days after they have been docketed.

INVESTIGATORY POWERS

SEC. 11. For the purpose of all hearings and investigations, which, in the opinion of the Board, are necessary and proper for the exercise of the powers vested in it by section 9 and section 10—

(1) The Board, or its duly authorized agents or agencies, shall at all reasonable times have access to, for the purpose of examination, and the right to copy any evidence of any person being investigated or proceeded against that relates to any matter under investigation or in question. Any member of the Board shall have power to issue subpenas requiring the attendance and testimony of witnesses and the production of any evidence that relates to any matter under inves-

tigation or in question, before the Board, its member, agent, or agency conducting the hearing or investigation. Any member of the Board, or any agent or agency designated by the Board for such purposes, may administer oaths and affirmations, examine witnesses, and receive evidence. Such attendance of witnesses and the production of such evidence may be required from any place in the United States or any Territory or possession thereof, at any designated place of hearing.

(2) In case of contumacy or refusal to obey a subpena issued to any person, any District Court of the United States or the United States courts of any Territory or possession, or the Supreme Court of the District of Columbia, within the jurisdiction of which the inquiry is carried on or within the jurisdiction of which said person guilty of contumacy or refusal to obey is found or resides or transacts business, upon application by the Board shall have jurisdiction to issue to such person an order requiring such person to appear before the Board, its member, agent, or agency, there to produce evidence if so ordered, or there to give testimony touching the matter under investigation or in question; and any failure to obey such order of the court may be punished by said court as a contempt thereof.

(3) No person shall be excused from attending and testifying or from producing books, records, correspondence, documents, or other evidence in obedience to the subpena of the Board, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual shall be prosecuted or subjected to any penalty or forfeiture for or on account of any transaction, matter, or thing concerning which he is compelled, after having claimed his privilege against self-incrimination, to testify or produce evidence, except that such individual so testifying shall not be exempt from prosecution and punishment for perjury committed in so testifying.

(4) Complaints, orders, and other process and papers of the Board, its member, agent, or agency, may be served either personally or by registered mail or by telegraph or by leaving a copy thereof at the principal office or place of business of the person required to be served. The verified return by the individual so serving the same setting forth the manner of such service shall be proof of the same, and the return post office receipt or telegraph receipt therefor when registered and mailed or telegraphed as aforesaid shall be proof of service of the same. Witnesses summoned before the Board, its member, agent, or agency, shall be paid the same fees and mileage that are paid witnesses in the courts of the United States, and witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States.

(5) All process of any court to which application may be made under this Act may be served in the judicial district wherein the defendant or other person required to be served resides or may be found.

(6) The several departments and agencies of the Government, when directed by the President, shall furnish the Board, upon its request, all records, papers, and information in their possession relating to any matter before the Board.

SEC. 12. Any person who shall willfully resist, prevent, impede, or interfere with any member of the Board or any of its agents or agencies in the performance of duties pursuant to this Act shall be punished by a fine of not more than $5,000 or by imprisonment for not more than one year, or both.

LIMITATIONS

SEC. 13. Nothing in this Act shall be construed so as to interfere with or impede or diminish in any way the right to strike.

SEC. 14. Wherever the application of the provisions of section 7 (a) of the National Industrial Recovery Act (U. S. C., Supp. VII, title 15, sec. 707 (a), as amended from time to time, or of section 77 B, paragraphs (l) and (m) of the Act approved June 7, 1934, entitled "An Act to amend an Act entitled 'An Act to establish a uniform system of bankruptcy throughout the United States' approved July 1, 1898, and Acts amendatory thereof and supplementary thereto" (48 Stat. 922, pars. (l) and (m)), as amended from time to time, or of Public Resolution Numbered 44, approved June 19, 1934 (48 Stat. 1183), conflicts with the application of the provisions of this Act, this Act shall prevail: *Provided*, That in any situation where the provisions of this Act cannot be validly enforced, the provisions of such other Acts shall remain in full force and effect.

SEC. 15. If any provision of this Act, or the application of such provision to any person or circumstances, shall be held invalid, the remainder of this Act, or the application of such provision to persons or circumstances other than those as to which it is held invalid, shall not be affected thereby.

SEC. 16. This Act may be cited as the "National Labor Relations Act."

Approved, July 5, 1935.

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